GOO KIM YEONG v. SHUKRI MAHMUD

HIGH COURT MALAYA, PULAU PINANG
NORDIN HASSAN JC
[CIVIL SUIT NO: 22NCVC-314-11-2013]
10 MARCH 2015

CONTRACT: *Sale and purchase of property – Specific performance – Application for State Consent rejected by Land Office – Appeal against decision of Land Office allowed – Defendant terminated agreement with plaintiff and entered agreement with third party – Whether there was time period to obtain State Consent – Whether agreement became null and void once application for State Consent was rejected*

CONTRACT: *Specific performance – Sale and purchase agreement – Defendant terminated agreement with plaintiff after Land Office rejected application for State Consent – Defendant entered into sale and purchase agreement with third party – Claim for specific performance of agreement – Whether specific performance possible since defendant had entered into agreement with third party – Whether plaintiff could claim damages – Specific Relief Act 1950, s. 18*

CONTRACT: *Void contract – Void for uncertainty – Application for State Consent rejected by Land Office – Appeal against decision of Land Office allowed – Defendant terminated agreement with plaintiff and entered agreement with third party – Whether there was time period to obtain State Consent – Whether there was uncertainty – Whether agreement ceased or became null and void once State Authority rejected application for consent – Contracts Act 1950, s. 30*

The plaintiff entered into a sale and purchase agreement ('SPA') with the defendant to purchase a property at RM1,500,000. Under the SPA, the completion date was four months from the date of receipt of the certificate of completion or from the date of the State Consent whichever was later with automatic extension of one month. When the certificate of completion and compliance was completed, the defendant applied for the State Consent. However, the land office rejected the said application. The plaintiff appealed against the land office's decision but was later informed of the defendant's intention to terminate the SPA if the State Consent was not obtained by 12 July 2013. The defendant agreed to extend the said date until 19 July 2013. The State Consent was issued when the appeal was allowed on 21 August 2013. However, the defendant terminated the SPA on 26 September 2013 and entered into a SPA with Fox Custom Tailor Sdn Bhd. In the present action, the plaintiff claimed against the defendant for specific performance of the SPA or in alternative, for damages to be awarded if the order of the specific performance was no longer possible seeing that the defendant had entered into SPA with a third party. In refuting the claim and arguing that the termination of the SPA was valid, the defendant submitted that (i) once the application for State Consent was rejected, the SPA became null and void; (ii) he had no knowledge pertaining the appeal made against

A the rejection for State Consent; and (iii) since the SPA did not provide the time to apply for State Consent, the SPA was void for uncertainty by virtue of s. 30 of the Contracts Act 1950 ('the Act').

Held (allowing claim):

B **(1)** There was nothing in the SPA which specified that the SPA ceased or became null and void once the State Authority rejects the application for consent. Neither was there any provision that stipulated the time period for the defendant to obtain the State Consent. (para 42)

(2) An appeal was made with regard to the State Authority's decision to C reject the application for consent and the defendant was informed about it. It was highly improbable that the letters which gave the ultimatum that the SPA would be terminated if the State Consent was not obtained by 19 July 2013 was made without the instruction of the defendant. Counsel who wrote there letters had no personal interest in the D transaction and only complied with the instruction given by those who engaged them. The instruction certainly did not come from the plaintiff. (paras 44, 48 & 49)

(3) The defendant failed in his contractual duty to obtain the State Consent when it was rejected. In any event, the plaintiff had treated the SPA as E still valid and took steps to appeal against the decision of the Land Office. The completion date of the SPA was four months within the extension of one month from the date of receipt by the plaintiff's solicitor. Bearing in mind that the State Consent was issued on 21 August 2013 and there was no time limit in the SPA to obtain the F State Consent, the SPA was still valid even though the State Authority had rejected the application for consent. (paras 52 & 53)

(4) Time to obtain the State Consent was not a term of the SPA and it could be concluded that the said building was still under construction when the parties entered into the said contract. Even if the time to obtain the State G Consent was a term of the SPA and if the defendant failed to obtain consent within the period but the plaintiff as the purchaser had not terminated the SPA, the time was no longer the essence of the contract. (paras 55 & 56)

(5) There was nothing uncertain about the SPA. The fact that there was no H time frame for the defendant to obtain the State Consent did not make the SPA uncertain pursuant to s. 30 of the Act. The Act itself had provided an answer for a SPA where no time for performance was specified by virtue of s. 47. The State Consent was obtained within a reasonable time. (paras 61, 62 & 63)

I **(6)** The defendant had breached the SPA by terminating it after the State Consent had been obtained. As the defendant had entered into a SPA in respect of the same property with Fox Custom Tailor Sdn Bhd, specific

performance was not suitable or possible in the circumstances. In the alternative, the plaintiff was awarded with RM500,000 in damages pursuant to ss. 18(1) and (2) of the Specific Relief Act 1950. (paras 70, 71, 72 & 77)

Case(s) referred to:
Balbeer Singh Karam Singh & Ors v. Sentul Raya Sdn Bhd [2014] 7 CLJ 461 CA ***(refd)***
Central Malaysia Company Ltd v. Chin Pak Chin [1967] 1 LNS 15 HC ***(refd)***
Cheng Chuan Development Sdn Bhd v. Ng Ah Hock [1982] 1 LNS 48 FC ***(refd)***
Hassan v. Ismail [1970] 1 LNS 35 FC ***(refd)***
Nyap Kui Fah v. Len On Contractor [1977] 1 LNS 9 FC ***(refd)***
Saw Siew Tuan v. Omicrast Manufacturers Sdn Bhd [2013] 9 CLJ 111 CA ***(refd)***
Sharikat Eastern Plastics Industry v. Sharikat Lam Seng Trading [1971] 1 LNS 132 HC ***(refd)***
Silver Concept Sdn Bhd v. Brisdale Rasa Development Sdn Bhd [2005] 3 CLJ 259 CA ***(refd)***
Tan Sri Khoo Teck Puat & Anor v. Plenitude Holding Sdn Bhd [1995] 1 CLJ 15 FC ***(refd)***
Yeo Liong Ho v. Loh Choon Hooi [2010] 2 CLJ 580 CA ***(refd)***

Legislation referred to:
Contract Act 1950, ss. 10, 30, 47, 74
Evidence Act 1950, s. 114(g)
Specific Relief Act 1950, ss. 18(1), (2)

For the plaintiff - KC Ang; M/s CP Ang & Co
For the defendant - Simon Tan (CZ Ooi with him); M/s Aswar, Simon & Azhar

Reported by Najib Tamby

JUDGMENT

Nordin Hassan JC:

Introduction

[1] This is a suit by the plaintiff against the defendant for specific performance of a sale and purchase agreement dated 20 June 2013 entered by the plaintiff as the purchaser and the defendant as the vendor involving a property known as 'A Business Unit No; C-G-3A, Vantage Desiran Tanjung erected on Lot No. PT 270, Seksyen 1, Bandar Tanjong Tokong, Daerah Timur Laut, Pulau Pinang held under Geran HS(D) 14586' ('the said property').

[2] In the alternative, the plaintiff prays for damages to be awarded if the order for specific performance is no longer possible as the defendant has entered into a sale and purchase agreement with a third party.

Background Facts

[3] The defendant purchased the said property from developer, UDA Land (North) Sdn Bhd and entered into a sale and purchase agreement dated 27 June 2011. The purchase price of this property is RM1,130,000.

[4] Section 9.02 of the said agreement provides that the vendor, UDA Land Sdn Bhd will complete and deliver vacant possession of the property to the defendant within 36 months from the date of the agreement.

[5] Before the completion of the said business unit, the plaintiff had purchased the said property from the defendant and entered into a sale and purchase agreement dated 20 June 2012. The purchase price is RM1,500,000.

[6] Clause 2.3, of the agreement stipulates that the defendant agreed to sell the said property to the plaintiff by way of the defendant assigning all his rights, title, interest and benefit in the said property to the plaintiff at the said purchase price.

[7] Thereafter, as required under cls. 5.1.1, 5.1.1(a) and the Second Schedule of the agreement, the plaintiff deposited a sum of RM75,000 and Messrs Anissah & Marina held the deposit sum as stakeholder pending the receipt of letter from the State Authority or other government agencies consenting to the sale of the said property.

[8] In accordance with cl. 4.9 of the agreement, the plaintiff also deposited RM300,000 as third party fixed deposit pledged in the defendant chargee bank to facilitate the defendant's loan for the purchase of the said property.

[9] Apart from that, as stated in s. 6 of the Second Schedule to the said agreement, the completion date is four months from the date of receipt by the plaintiff's solicitor the Certificate of Completion and Compliance or from the date of State Consent whichever is later with automatic extension of one month and with interest of 6% per annum.

[10] The solicitor for the plaintiff in the sale and purchase of the said property is Messrs Anissah & Marina.

[11] Clause 4.3.2 of the agreement provides that the defendant shall at his own costs and expense obtain the consent from the developer, State Authority and or other relevant authority pertaining to the sale and purchase of the said property.

[12] On 19 March 2013 the Certificate of Completion and Compliance for the said property was issued and signed by Ar Mohd Khairi Zakaria a professional architect from KZ Arkikraf.

[13] On 28 May 2013, the solicitor for the plaintiff, Messrs Anissah & Marina assisted the defendant in applying for the State Consent as the defendant was unrepresented in the sale and purchase of the said property.

[14] The defendant then paid the plaintiff's solicitor the sum of RM2,180 for professional charges for services itemised among others as consent fee.

[15] However, the land office *vide* letter dated 10 June 2013 had rejected the said application for State Consent for the defendant to transfer the said property to the plaintiff on the ground that the property was categorised as bumiputra quota.

[16] On 17 June 2013, upon instruction by the plaintiff, an appeal was made against the decision of land office by Messrs Shen & Associates and defendant was informed of this appeal.

[17] Subsequently Messrs Shen & Associates received a letter dated 5 July 2013 from Messrs Anissah & Marina informing the defendant's intention to terminate the said agreement if the State Consent is not obtained by 12 July 2013. Then *vide* letter from Messrs Anissah & Marina dated 15 July 2013 to the plaintiff, the defendant agreed to extend the said date until 19 July 2013.

[18] On the 21 August 2013 the appeal was allowed and the State Consent was issued.

[19] On 9 September 2013, a copy of the Letter of Consent from the land office was sent to Messrs Anissah & Marina.

[20] However, the defendant terminated the sale and purchase agreement *vide* letter from Messrs Zulhaimi & Co dated 26 September 2013.

[21] Next on 12 March 2014, the defendant entered into a sale and purchase agreement with Fox Custom Tailor Sdn Bhd selling the said property to Fox Custom for a purchase price of RM2,090,000.

Plaintiff's Contention

[22] Plaintiff contends that the completion date of four months and extension of one month under s. 6, Second Schedule to the agreement dated 20 June 2012 began to run once both the Certificate of Completion and Compliance and State Consent are obtained. In the present case the State Consent was obtained on the 21 August 2013. Therefore when the defendant terminated the said agreement on 26 September 2013, the completion date of the agreement has not expired.

[23] Plaintiff also submits that the said agreement does not impose any time period for the issuance of the Certificate Completion and Compliance and State Consent.

[24] Plaintiff further argued that under cl. 4.3.2 of the agreement, it is the defendant's obligation to apply for the State Consent for the transfer of the said property to the plaintiff. Defendant also was aware of this obligation when defendant made payment of RM2,180 to Messrs Anissah & Marina for charges in applying for the State Consent.

[25] It was also submitted that the defendant knew an appeal was made to the land office when the application for State Consent was rejected. The letter dated 5 July 2013 and 15 July 2013 issued by Messrs Anissah & Marina clearly shows that the defendant was aware of the appeal and had consented to it.

[26] However the plaintiff argued that the imposition of a time period for the issuance of the State Consent as reflected in the said letters dated 5 July 2013 and 15 July 2013 is wrong and plaintiff had not consented to it. More ever, under the agreement it is the defendant's contractual duty to apply for the State Consent.

[27] As such, the plaintiff submits that the defendant had breached the sale and purchase agreement when the defendant terminated the agreement after the State Consent has been obtained on 21 August 2013.

Defendant's Contention

[28] The defendant, on the other hand contends that once the application for State Consent was rejected on 10 June 2013, the said agreement become null and void. This is on the ground that there is no provision in the agreement that provides for parties to appeal once the application for State Consent is rejected.

[29] The defendant further submits that the defendant has no knowledge pertaining to the appeal made against the rejection for State Consent and as such the outcome of the appeal is of no consequence to the defendant.

[30] The defendant also submits that since cl. 4.3.2 of the agreement does not provide the time to apply for State Consent, the said sale and purchase agreement is void for uncertainty by virtue of s. 30 of the Contracts Act 1950.

[31] Therefore, the defendant submits that the termination of the sale and purchase agreement dated 20 June 2012 by the defendant is valid.

Findings Of The Court

[32] It is undisputed that the sale and purchase agreement dated 20 June 2012 entered by plaintiff and the defendant is legally enforceable contract. This agreement complies with the requirement of s. 10 of Contract Act 1950.

Section 10 provides:

> All agreements are contract if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.

[33] In the present case, when both parties signed the said agreement on 20 June 2012, there is a legal relationship created and both are bound by the terms and conditions of the said agreement. There are also legal consequences for non-compliance of the agreement.

[34] As to the construction of the said agreement, this court by applying the objective test will ascertain what the parties have agreed rather than what the parties say they have agreed. The facts and circumstances of this case will also be taken into consideration in ascertaining what have been agreed by parties.

[35] In Court of Appeal case of *Silver Concept Sdn Bhd v Brisdale Rasa Development Sdn Bhd* [2005] 3 CLJ 259; [2005] 4 MLJ 101, Abdul Kadir Sulaiman JCA at p. 112 had this to say:

> The construction of a contract is a question of law to be determined by this court. This court is not bound by the admission of witness or the concession made by the counsel in the court below.

[36] Having analysed the said agreement, it is clear that the plaintiff agreed to purchase and the defendant agreed to sell the said property for a purchase price of RM1,500,000. It is also the duty of the defendant to obtain the consent from the State Authority for the transfer of the said property to the plaintiff. Clauses 2.3, 4.3.2 and s. 2 of the Second Schedule reflected these agreements by parties.

[37] In compliance with the terms of the said agreement, plaintiff had deposited the sum of RM75,000 and was held by Messrs Anissah & Marina as stake holder pending the receipt of consent letter from the State Authority.

[38] Plaintiff also had pledged a sum of RM300,000 to Maybank Banking Bhd, the defendant chargee bank to facilitate the defendant's loan for the purchase of the said property as required under the agreement.

[39] As for the defendant, it is the defendant's contractual duty to obtain the consent from State Authority as provided under cl. 4.3.2 of the agreement.

[40] The facts show that this contractual duty of the defendant to obtain the State Consent was carried out by counsel for the plaintiff, Messrs Anissah & Marina as the defendant was unrepresented by counsel in the sale of the said property. The application for the consent was made on 28 May 2013. The defendant then paid the counsel a sum of RM2,180 and this shows that the defendant agreed and was willing to engage the counsel to represent him to obtain the State Consent.

[41] However, the application for the State Consent was rejected by the land office *vide* letter dated 10 June 2013. Here is where the issue began as the defendant now contends that the agreement became null and void once the State Authority rejected the application for the consent.

[42] Now, looking at the express provisions of the Agreement, nothing stated therein that the agreement ceased or became null and void once the State Authority rejects the application for consent to transfer the said property to the plaintiff. Neither was there any provision that stipulates the time period for the defendant to obtain the State Consent.

[43] In the circumstances, this court has to refer back to what was agreed by parties in the agreement dated 20 June 2012. Obviously on this date, the defendant agreed to sell the said property to the plaintiff for a sum of RM1,500,000.

A This court is also of the view that to convince the plaintiff to enter into this agreement, the defendant had agreed to obtain the consent from the State Authority at his own costs and expense and this was inserted as term of the agreement under cl. 4.3.2.

B **[44]** The facts further shows that an appeal was made with regard to the State Authority's decision to reject the application for consent. The appeal was made by Messrs Shen & Associates *vide* letter dated 17 June 2013 upon instruction from the plaintiff.

[45] According to the testimony of Jamie Ng Su Ping (PW2), partner of C Messrs Shen & Associates and who was engaged to handle this matter, the defendant was informed about the said appeal.

[46] At this juncture, as at 17 June 2013, the defendant is still keen to proceed with the agreement to sell the said property to the plaintiff.

[47] However, the defendant's intention to sell the said property to the D plaintiff has changed based on the letter dated 5 July 2013 from Messrs Anissah & Marina. In this letter the defendant informed his intention to terminate the agreement if the State Consent is not obtained by 12 July 2013 and by letter from the same counsel dated 15 July 2013 extended the date until 19 July 2013.

E **[48]** Although it was argued that the defendant has no knowledge of the appeal made by the plaintiff to the State Authority, this court after having analysed the evidence especially the testimony of PW2 and letters dated 5 July 2013 and 15 July 2013, is of the considered view that the defendant has the knowledge of the said appeal and consented to it.

F **[49]** Furthermore, it is highly improbable that the letter dated 5 July 2013 and 15 July 2013 which gave the ultimatum that the agreement will be terminated if Sate Consent is not obtained by 19 July 2013 was made without the instruction of the defendant. Counsel who wrote these letters obviously has no personal interest in the transaction and only comply with instruction G given by those who engaged them. Certainly the instruction did not come from the plaintiff.

[50] It is also perplexing to note that the contractual duty to obtain the State Consent is on the defendant but the defendant himself now contends that he H disagrees to appeal against the rejection for consent by the State Authority. This to my mind is an attempt to frustrate the said agreement dated 20 June 2012.

[51] Be that as it may, the issue here is whether the said agreement becomes null and void once the State Authority rejected the application for consent I to transfer the property to the plaintiff.

[52] Firstly, it is the defendant who failed in its contractual duty to obtain the State Consent when it was rejected on 10 June 2013. In any event, the plaintiff has treated the agreement as still valid and took steps to appeal against the decision of the Land Office. Eventually the State Consent was granted on the 21 August 2013.

[53] Furthermore, the completion date of the said agreement is four months with extension of one month from the date of receipt by the plaintiff's solicitor, the letter in respect of issuance of the Certificate of Completion and Compliance or from the date of State Consent, whichever is the later. Bearing in mind that the State Consent was issued on 21 August 2013 and there is no time limit in the agreement to obtain the State Consent, it is clear that the agreement is still valid although the State Authority has rejected the application for consent on the 10 June 2013.

[54] The defendant certainly cannot impose unilaterally a time period to obtain the State Consent before 19 July 2013 by letter dated 15 July 2013 which the agreement itself does not provide. After all, again it is the contractual duty of the defendant to obtain the State Consent.

[55] In this present case, time to obtain the State Consent was not a term of the agreement and one of the reasons that this court reasonably concludes from the facts is that the said building is still under construction when the parties entered into the said contract on 20 June 2012.

[56] Even if the time to obtain the State Consent is a term of the agreement and if the defendant fails to obtain the consent within the period but the plaintiff as the purchaser has not terminated the agreement, the time is no longer the essence of the contract.

[57] This is explained in *Yeo Liong Ho v. Loh Choon Hooi* [2010] 2 CLJ 580 where it was held by the Court of Appeal as follows:

> [15] The vendor failed to obtain the consent to transfer at the expiry of the extended consent period / completion date (21 August 1991) under the agreement. *However, the purchaser did not exercise his right to terminate the sale and purchase agreement and did not subsequently impose a time limit for the vendor to obtain, the consent to transfer. In such circumstances, in law, we hold time was no more the essence of the contract for the completion of the sale and purchase agreement and, in particular, for the payment of the balance of the purchase price.*

[58] Likewise in the case of *Sharikat Eastern Plastics Industry v. Sharikat Lam Seng Trading* [1971] 1 LNS 132; [1972] 1 MLJ 21 where the court explained the principle that when time is of the essence of the contract, the said time may be waived by conduct of parties when indulging in further negotiation pertaining to the time.

[59] In the present case, the appeal to the State Authority and the letters dated 5 July 2013 and 15 July 2013 clearly shows there are further negotiation involved by parties and furthermore the time is not the term of the agreement in the present case. Therefore the time to obtain the State Consent is not the essence of the contract in the present case.

[60] The next issue raised by the defendant is that the said sale and purchase agreement is void for uncertainty under s. 30 of the Contract Act. The defendant cited *inter alia* the Court of Appeal case of *Saw Siew Tuan v. Omicrast Manufacturers Sdn Bhd* [2013] 9 CLJ 111; [2013] 6 MLJ 189.

[61] Having analysed the sale and purchase agreement dated 20 June 2012, this court finds that there is nothing uncertain about the agreement. The fact that there is no time frame for the defendant to obtain the State Consent does not make the agreement uncertain pursuant to s. 30 of the Contract Act.

[62] The Contract Act itself has provided an answer for an agreement where no time for performance is specified.

Section 47 provides:

> Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement **must be performed within a reasonable time.**
>
> Explanation: The question 'what is reasonable time' in each particular case is, a question of fact.
>
> (emphasis added)

(See also *Nyap Kui Fah v. Len On Contractor* [1977] 1 LNS 9; [1978] 1 MLJ 208, *Hassan v. Ismail* [1970] 1 LNS 35; [1970] 1 MLJ 210).

[63] In the present case, the sale and purchase agreement was signed on 20 June 2012. At that time the said building is still under construction. The completion date is three years from the date of the sale and purchase agreement entered between the defendant and UDA Land Sdn Bhd which is on 27 June 2011. The application for State Consent pursuant to the agreement dated 20 June 2012 was made on 28 May 2013 but was rejected on 10 June 2013. Upon an appeal made, the State Consent was granted on 21 August 2013. Based on these facts, the court finds that the State Consent was obtained within a reasonable time.

[64] In the circumstances, this court finds and hold that s. 30 of the Contract Act 1950 for uncertainty is inapplicable in the present case.

[65] The case of *Saw Siew Tan* (*supra*) cited by the defendant is distinguishable on its facts. In this case, the Court of Appeal held the sale and purchase agreement is void for uncertainty as at the time of its execution, the appellant has no good title to the property as the lease had expired 13 years earlier.

Contrary with the facts in the present case, both parties are legally competent to enter into the agreement.

[66] Next is the issue of adverse inference under s. 114(g) of the Evidence Act 1950 for plaintiff's failure to call the solicitor from Messrs Anissah & Marina. The defendant contends that the solicitor is an important witness as she was the person who handled the transaction of the said property between the parties and should be called by plaintiff to testify.

[67] It is trite law that adverse inference may be invoked for non calling of material witness or witnesses. Having gone through the totality of evidence before the court, I find that the solicitor from Messrs Anissah & Marina is not a material witness for the plaintiff's case and even if called, it will not produced unfavorable evidence to the plaintiff. On the contrary it will further strengthen the plaintiff's case pertaining to the letters dated 5 July 2013 and 15 July 2013.

[68] In any event, the evidence of PW2 from Messrs Shen & Associates and other witnesses called by plaintiff is sufficient to establish the plaintiff's case. Therefore s. 114(g) of the Evidence Act 1950 is also inapplicable in this case.

[69] On the facts of this case, it is inevitable conclusion that the defendant terminated the said agreement in order to obtain a higher price for the said property and this is evident by the sale and purchase agreement entered by the defendant in respect of the same property with Fox Custom Tailor Sdn Bhd for a purchase price of RM2,090,000. As such the defendant failed to show good faith to complete the sale and purchase agreement dated 20 June 2012 with the plaintiff.

[70] Based on the above mentioned reasons and on balance of probabilities, this court hold that the defendant had breached the sale and purchase agreement dated 20 June 2012 by terminating the said agreement *vide* letter dated 26 September 2013 after the State Consent has been obtained on 21 August 2013.

[71] As the defendant had entered into a sale and purchase agreement in respect of the same property with Fox Custom Tailor Sdn Bhd, this court is of the view that specific performance is not suitable or possible in the circumstances.

[72] In the alternative and as claimed by the plaintiff, this court award damages pursuant to ss. 18(1) and (2) of the Specific Relief Act 1950.

[73] As explained by the Court of appeal in *Balbeer Singh Karam Singh & Ors v. Sentul Raya Sdn Bhd* [2014] 7 CLJ 461 at p. 477 as follows:

> Clearly, pursuant to s. 18(5) of the Act, the court is not precluded from awarding damages, and pursuant to s. 18(2), holding that in the circumstances of impossibility specific performance ought not to be granted, but that there being a contract between the parties which has been broken by the respondent and that the appellants are entitled to

A compensation for that breach, the court must award compensation accordingly *in lieu* of specific performance. It is appropriate, in the circumstances, that such compensation be assessed by the Deputy Registrar of the High Court by comparison with an average market values of comparable units in the vicinity and deducting therefrom the purchase price under the SPAs in each case.

B

[74] As regard to damages for breach of contract, the general principal is that the innocent party is to be placed as far as money can do, in the same position as if the contract had been performed.

(See *Tan Sri Khoo Teck Puat & Anor v. Plenitude Holding Sdn Bhd* [1995] 1 CLJ
C 15; [1994] 3 MLJ 777 (FC)).

[75] The law on damages for breach of contract is also provided under s. 74 of the Contract Act 1950 as follows:

D When a contract has been broken, the party who suffers by the breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from the breach or which the parties knew, when they made the contract, to be likely to result from the breach of it.

E **[76]** As to the amount of damages for breach of contract relating to transfer of land, the Court of Appeal in *Balbeer Singh Karam Singh & Ors v. Sentul Raya Sdn Bhd* (*supra*) explained that the amount is by comparing an average market value of the property and the contractual price in the sale and purchase agreement.

F (See also *Central Malaysia Company Ltd v. Chin Pak Chin* [1967] 1 LNS 15; [1967] 2 MLJ 174 and *Cheng Chuan Development Sdn Bhd v. Ng Ah Hock* [1982] 1 LNS 48; [1982] 2 MLJ 222 (FC)).

[77] In the present case, the purchase price under the sale and purchase agreement dated 20 June 2012 is RM1,500,000 and the market price as
G evident from the sale and purchase agreement between the defendant and Fox Custom Sdn Bhd is RM2,090,000. Therefore the amount of damages is about RM500,000.

Conclusion

H **[78]** This court therefore order the defendant to pay damages of RM450,000 to the plaintiff.

[79] This court further order that the defendant pays the plaintiff interest of 5% per annum on the judgment sum from judgment date until full realisation.

[80] The defendant is also to pay costs of RM30,000 to the plaintiff.

I